IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1492 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPN

Versus

ADAM ISMAIL MOHMED PATEL

Appearance:

1. Special Civil Application No. 1492 of 1999

MR HARDIK C RAWAL for Petitioner No. 1

MR SHAKEEL A QURESHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner. Mr. Qureshi, the learned advocate appearing for the respondent workman has not remained present today when the matter has been called out. Nobody has made a

mention on his behalf. No sick note or leave note has been filed by him for today. Therefore, the matter has been taken up for final hearing in his absence.

By way of this petition, the petitioner has challenged the award made by the labour court concerned in reference No. 27 of 1991 dated 31st July, 1998 wherein the labour court has set aside the order of dismissal and granted 50 per cent of the back wages for the period from 24th October, 1989 to 31st December, 1997.

This Court has issued rule and has granted interim relief by order dated 1st March, 1999.

Learned advocate Mr.Raval for the petitioner has submitted that the respondent workman has remained absent for a period of two months and has not explained the period of his absence and his past record is also bad and, therefore, the labour court has committed gross error in granting 50 per cent of the back wages. He has submitted that the labour court has come to the conclusion that the departmental inquiry is legal and valid and even the findings recorded are also legal and valid but has considered the aspect of punishment and considering the fact that the respondent has already reached the age of superannuation in January, 1998 and, therefore, the labour court has not granted reinstatement but granted fifty per cent of the back wages for the intervening period but according to the form which was filled up by the respondent, his date of birth as mentioned in the form was 15th February, 1934 and, therefore, he was due to retire from service in February, 1992 and, therefore, the concerned workman was due to retire in February, 1992 but the concerned workman has deposed before the labour court that at the time of his deposition, he was aged about 55 years and thereby has made incorrect statement in his deposition by not giving correct details as regards his date of birth before the labour court and, therefore, the labour court has committed error in granting back wages in favour of the respondent workman for the intervening period. He has produced xerox copy of Form of application for the posts filled in by the respondent which is ordered to be taken on record of this petition.

I have considered the submissions made by the Mr. Raval. Most of the facts are not in dispute. For remaining absent for a period from 26th April, 1989 to 2nd June, 1989, the respondent was removed from service. Before the labour court, statement of claim was filed by the workman and written statement thereto was filed by

the petitioner and, thereafter, the respondent was examined before the labour court at Exh. 15 on 30th January, 1995 wherein he has deposed that he was aged about 55 years at that time. Thereafter, the respondent filed purshis at Exh. 16 and thereby, he has not challenged the legality and validity of the departmental inquiry. Thereafter, merits of the matter were examined by the labour court. Since the legality, validity and propriety of the departmental inquiry initiated against the respondent was not challenged by the respondent, the findings recorded by the competent authority were held to be legal and proper by the labour court. However, the labour court found that for remaining absent for a period of about two months, punishment of dismissal is harsh and unjustified. The labour court considered the deposition of the workman and granted 50 per cent of the back wages for a period from 24th October, 1989 to 31st December, 1997. However, considering the fact that the date of birth of the respondent workman is 15th February, 1934, as per the form filled in by the respondent and submitted in the corporation, his date of retirement would be in the month of February, 1992 but in view of the incorrect statement made by the workman before the labour court, the labour court has granted 50 per cent of the back wages from the date of dismissal till 31st December, 1997. Therefore, in view of this, the labour court has committed gross error in granting 50 per cent back wages to the respondent. The labour court has also not considered as to whether the respondent has remained unemployed during the intervening period or not and has not assigned any reasons as to on what basis, it has been granting 50 per cent back wages for the period from the date of dismissal till 31st December, 1997. No discussion has been made by the labour court in that regard and no reasons have been recorded in that regard. However, considering the fact that for a misconduct of his having remained absent for a period of two months without prior permission, he has been dismissed from service, the labour court has rightly set aside the order of dismissal. However, the labour court has committed an error granting back wages from the date of dismissal till 31st December, 1997 considering the date of birth as 15th February, 1934. Therefore, according to my opinion, back wages are required to be reduced by directing that the respondent workman is entitled to 25 % back wages for a period from 24th October, 1989 till the date of his retirement, according to the record of the corporation.

Accordingly, this petition is partly allowed. Award made by the labour court concerned in Reference No. 27 of 1991 dated 31st July, 1998 is modified in so far

as it relates to back wages to the effect that instead of 50 %, now the respondent workman is entitled for such back wages at the rate of 25 % alone for a period from 24th October, 1989 till the date of his retirement as per the record of the corporation. Rule is made absolute in terms indicated hereinabove with no order as to costs.

7.5.2002. (H.K. Rathod,J.)

Vyas